HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 822/03 (S/S)

Pawan Kumar Sharma

vs

State and others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 19.08.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION No. 822 (S/S) of 2003

Pawan Kumar Sharma,
S/o Late Shri Surendra Kumar Sharma
R/o 122/264 Tularambagh, Post Daaganj,
District Allahabad. .....Petitioner

Versus

1. State of Uttaranchal through Secretary, Irrigation Department, Dehradun.
2. Chief Engineer, Irrigation Department, Uttaranchal Government, Dehradun.
3. Superintending Engineer, Maneri Bhali Stage 2, Mandal Joshyara, Uttarkashi. ..... Respondents

Sri M.C. Pant, Counsel for the petitioner.
Standing Counsel for the respondent no.1 to 3.

Dated: 19.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri M.C. Pant, Counsel for the petitioner and Standing Counsel for the respondent No. 1 to 3.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 05.06.2003 passed by the respondent no.1.

3. Briefly, stated, the father of the petitioner Shri Surendra Sharma was holding a permanent post of Junior Engineer in the office of Executive Engineer, Maneri Bhali, Stage 2, Mandal Joshyara, Uttarkashi. He died on 09.3.1987 in harness leaving behind his mother, sister and the petitioner himself as his sole and legal heir.

4. At the relevant time, the petitioner was only 6 years of age, therefore, mother of the petitioner Smt. Madhuri Sharma moved an application on 30.10.1987 before the Executive Engineer stating therein that the petitioner and her daughter Km. Hema are minor and there was no one in the family to look after them and she is suffering from mental problem and as such she is unable to do the job. Therefore, she requested the authority concerned to consider the petitioner for appointment as soon as he attains the age of majority and further requested to keep one seat reserved for granting compassionate appointment to the petitioner on humanitarian ground.

5. On attaining the age of majority, the petitioner moved an application on 31.07.1999 before the respondent no.2 to grant him appointment on compassionate ground under the dying in harness rules.

6. In pursuance of the aforesaid application, the respondent no. 2 vide his letter dated 23.08.1999, asked the petitioner to submit the necessary documents such as Heirs Certificate issued by the District Magistrate, No Objection for the legal heirs of late Surendra Sharma and other relevant documents.

7. After receiving the letter dated 23.08.1999, petitioner submitted required documents along with a representation dated 30.08.1999.

8. Respondent No. 2 sent a letter dated 15.09.1999 to the Chief Engineer, Adhishthan 4 Ka Anubhag, Irrigation Department, U.P. Lucknow recommending the appointment of petitioner under the Dying in Harness Rules on compassionate grounds.

9. On 02.02.2000, the Chief Engineer, Irrigation Department, Uttar Pradesh, Adhishthan 4 Ka Anubhag rejected the

claim of the petitioner on the ground that application for appointment was submitted after 12 years.

10. Against the order dated 02.02.2006, the petitioner preferred a Writ Petition being Writ Petition No. 28612 of 2000 *Pawan Kumar Sharma Vs. The Engineer-in-Chief, Irrigation Department E-4 Anubhag, U.P. Lucknow and others* in the High Court of Judicature at Allahabad, which was disposed of with the following direction:

> *"It may, however be observed bare that in view of the proviso to Rule 5 (1) of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974, inserted by notification dated October 13, 1988 the State Government is colted with the power to relax the Rule of Limitation in appropriate in order to do complete justice.*
>
> *Accordingly, notwithstanding the contention of his appl- the petitioner may still approach the State Government for appropriate order under the provision to Rule 5(1) of the Rules. It goes saying that tin case any such application is moved by the petitioner the same shall be considered and disposed of at the right level of the State Government expeditiously, if possible, within a period of two months from the date of receipt of the application along with a certified copy of the.*
>
> *This petition is disposed of in the light of the above direction."*

11. After obtaining the certified copy of the order dated 10.07.2000, petitioner submitted the same to the State Government

along with a representation on 18.11.2000, which was rejected by the respondent no.1 on 05.06.2003 to the following effect :

> “Jh iou dqekj 'kekZ iq= Lo0 Jh lqjsUnz dqekj 'kekZ dks e`rd vkfJr ds :Ik esa lsok;ksftr fd;s tkus ls lEcfU/kr vkids lk= fnukad 20-05-2003 ds lanHkZ esa voxr djkuk gS fd vkids ifr Jh lqjsUnz dqekj 'kekZ] voj vfHk;Urk] eusjh Hkkyh cka/kh [k.M] eusjh (mRrjdk’kh) dh e`R;q fnukad 09-03-1987 dks gqbZ FkhA fu;ekuqlkj e`rd vkfJr ds :Ik esa lsok;kstu gsrq 05 o"kZ ds Hkhrj vkosnu djuk vfuok;Z gSA vr% vc bl ekeys esa yxHkx 16 o"kZ ds foyEc ds mijkUr Jh iou dqekj 'kekZ dks e`rd vkfJr ds :Ik esa lsok;ksftr fd;k tkuk lEHko ugha gSA”

12. In the case of ***Sushma Gosai and others Vs. Union of India and others, 1989 (4) SCC, 468*** *the Apex Court* has held as under:-

> *“We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be provided immediately*

to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent no. 2 to appoint Sushma Gosain appellant in the post to which she has already qualified. We further direct that she shall be appointed in an appropriated place in Delhi itself. The appointment shall be made within three weeks from today."

13. Relying upon the judgment of State of ***Haryana and Ors. v. Rani Devi & another (JT 1996 (6) SC 646)*** in ***State of Manipur Vs. MD. Rajaodin 2003 AIR SCW 4339,*** the Apex Court has observed as under:

"10. As was observed in State of Haryana and Ors. v. Rani Devi & Anr. (JT 1996 (6) SC 646), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to fram rules, regulations or to issue such administrative orders which can stand the test of Article 14 and 16. Appointment on compassionate ground cannot ber claimed as a matter or right. Die-in-harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased-employee. In Rani Devi's case (supra) it was held tha tscheme regarding appointment on

compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In Life Insurance Corporation of India v. Asha Ramchandra Ambedkar (Mrs) and Anr. (1994 (2) SCC 718) it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations framed in respect thereof do not cover and contemplates such appointments. It was noted in Umesh Kumar Nagpal v. State of Haryana and Ors. (1994 (4) SCC 138) that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."

14. In view of the above, liberty is given to the petitioner to file a fresh representation within a period of two weeks from the date of presentation of the certified copy of this order. If such a representation is filed, the same shall be decided in accordance with law within a period of two months thereafter.

15. Subject to the aforesaid observation, the writ petition is disposed of. No order as to costs.

19.8.2006 **(Rajesh Tandon, J.)**
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